



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1994

Mr. John E. Chosy
Carinhas, Chosy & Sullivan, L.L.P.
Corporate Plaza, Suite 109
302 Kings Highway
Brownsville, Texas 78521

OR94-670

Dear Mr. Chosy:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552 (former V.T.C.S. art. 6252-17a).¹ We assigned your request ID# 21706.

The Town of Indian Lake (the "town"), which you represent, has received a request for "all correspondence from the City attorney, John E. Chosy, to the Town of Indian Lake or any of its elected officials concerning the plat of land in Indian Lake East, commonly known as Indian Lake East III." You seek to withhold the requested information under sections 552.101 (formerly V.T.C.S. art. 6252-17, § 3(a)(1)) and 552.107 (formerly V.T.C.S. art. 6252-17a, § 3(a)(7)) of the Government Code.²

Section 552.301(a) of the Government Code provides:

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²You assert section 552.101 of the Government Code in conjunction with the attorney-client privilege. Attorney-client communications are excepted from required public disclosure under section 552.107, but are not made confidential under section 552.101. See Open Records Decision Nos. 630 (1994); 575 (1990). You do not raise, and we are not aware of, any statute or judicial decision that makes the requested information confidential. Therefore, the information requested here is not confidential under section 552.101.

A governmental body that receives a written request for information that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.

Section 552.302 provides:

If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information.

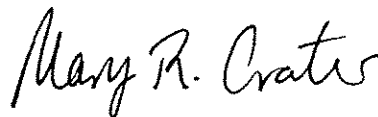
The city received the latest request by letter dated July 2, 1993. You requested a determination of this office by letter dated August 6, 1993. On the basis of these facts, we conclude that you failed to request a decision within the ten-day period provided by section 552.301(a) of the Government Code.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982) at 1-2. The governmental body must show a compelling reason to withhold the information to overcome this presumption. *Hancock*, 797 S.W.2d at 381. Compelling reasons exist when some other source of law makes the information confidential or when the privacy or property interests of third parties are at stake. Open Records Decision No. 150 (1977) at 2.

You have not shown a compelling reason why the requested information should be withheld. The fact that information might have been excepted from disclosure under section 552.107(1) had you made a timely request for a ruling does not constitute a compelling reason to withhold the information. See Open Records Decision No. 630 (1994) (concluding that section 552.107(1) is waived if not timely raised) (copy enclosed). We conclude, therefore, that you may not withhold the requested information under section 552.107(1) of the Government Code. The city must release the requested information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/GCK/rho

Ref.: ID# 21706

Enclosures: Submitted documents
Open Records Decision No. 630

cc: Mr. Fred S. Pfeifer
P.O. Box 97
Los Fresnos, Texas 78566-0097
(w/o enclosures)